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LINCOLN'S SKILL AS A LAWYER.

BY JAMES L. KING, STATE LIBRARIAN, TOPEKA, KANSAS.

THE story of Abraham Lincoln's life will not be complete so long as any man lives who was personally acquainted with that great man and has neglected to make a suitable and enduring public record of all the incidents of that acquaintance.

Judge Abram Bergen, a well-known attorney of Topeka, Kansas, was a citizen of Cass County in the State of Illinois at the time Lincoln resided in that locality, and had unusual opportunities to study his character and to observe his methods as a lawyer long before he became famous as a statesman or political leader. For this reason, and to supply some additional facts concerning disputed points in Lincoln's early career, his impressions and recollections are worth preserving.

In the year 1858 Judge Bergen was just entering upon the practice of law in one of the circuits frequently visited by Mr. Lincoln. Here it was the young attorney's privilege to meet him in the courts of five counties, and to carefully note his every word and movement in several important trials, as well as to enjoy many delightful evenings in his society at the various country taverns. This was nearly forty years ago, but he retains a vivid remembrance of all these events, and of the personal appearance and characteristics of the tall, thin, bony, and altogether ungraceful-looking man who became the head of a great party, the liberator of an enslaved race, and a central figure in history.

"I have read all the descriptions of Lincoln's remarkable face," said Judge Bergen to the writer, "and examined all his portraits as they have appeared in magazines and elsewhere, but to my mind none of them conveys a perfect idea of the irregularity of his features. Studying his face directly from the side, the lowest part of his forehead projected beyond the eyes to a greater

distance than I have ever observed in any other person. In the court room, while waiting for the celebrated Armstrong case to be called for trial, I looked at him closely for full two hours, and was so struck by this peculiarity of his profile that I remember to have estimated that his forehead protruded more than two inches, and then retreated about twenty-five degrees from the perpendicular until it reached a usual height in a straight line above his eyes.

“During the two hours referred to Lincoln sat with his head thrown back, his steady gaze apparently fixed upon one spot of the blank ceiling, entirely oblivious to what was happening about him, and without a single variation of feature or noticeable movement of any muscle of his face. But when he began to talk his eyes brightened perceptibly, and every facial movement seemed to emphasize his feeling and add expression to his thoughts. Then vanished all consciousness of his uncouth appearance, his awkward manner, or even his high-keyed, unpleasant voice, and it required an extraordinary effort of the will to divert attention to the man, so concentrated was every mind upon what he was saying.”

In the opinion of the judges and practitioners with whom Lincoln was associated during his quarter of a century at the bar his most prominent characteristic was his rare faculty for detecting and disclosing the controlling point in a legal battle. But not less than this was his clear, full, orderly, and accurate statement of a case; always so fair and logical that it was often said that after Lincoln had summed up the important facts in a controversy there was but little occasion for argument on either side. He habitually employed at the bar the same care and skill in the use of words and the expression of ideas which he so often afterward exhibited when called to a higher field of labor; instances of which are seen in all his state papers, and in the changes for the better which he made in the writings of his scholarly Secretary of State, particularly in the correspondence relative to the Trent affair, which probably avoided a war with England. A fine example of the grandeur of his diction is to be found in his Gettysburg address, which has a permanent place in the literature of the world.

Many of Lincoln's biographers contend that he was slow in thinking. According to Judge Bergen's estimate this was only

seeming. He thought vigorously and thoroughly, but did not speak quickly. In reality his hesitation was only the result of his great care always to know his ground. His habit was, before speaking or acting, to deliberately look through, around, and beyond every fact, statement, or proposition involved, and subject it to his wonderful powers of perception and analysis. This required time, but it made him successful in every important undertaking. While he thought much, he could not truthfully be called a great reader. He knew thoroughly the works of Coke, Blackstone, Stephen, Chitty, Starkey, and later Greenleaf's *Evidence* and Story's *Equity*. He gave but little time to searching for precedents, or studying what is called case law. When he first engaged in legal work there were but few text-books or Supreme Court reports, and only three Illinois reports. There are now of that court alone 162 volumes, and of the Court of Appeals 62 volumes, a total of 224 Illinois reports—more than eleven times the number in existence at the time he quit the practice of law.

On the circuit Lincoln cited but few authorities in the argument of a legal proposition. The old maxim, "he knows not the law who knows not the reason for the law," did not apply to him. He stated the rule clearly, fully, and logically, giving the reason as forcibly as it appears in the writings of the masters of jurisprudence; and, without having seen a decision on the disputed point, generally reached the same correct conclusion as the Supreme Courts that sat near large libraries, having the help of elaborate briefs, and with ample time to examine other and similar cases. Avoiding deception in fact, argument, or law, with his clear vision and accurate reasoning powers, and fairness and thoroughness of statement, he had the respectful confidence of the judges to a remarkable degree. It was easily seen and felt on the circuit that Lincoln did not need to produce opinions as authority, but the presumption was that the Court would be inclined to agree with him on nearly every proposition he made, unless his opponent should produce a case directly in point against him. Even then the remark was not unusual from the bench that if the question had been original in that court the decision might have been different.

By a small class of habitual litigants, and by some political opponents, Mr. Lincoln was often referred to as a third-rate law-

yer. It is not an uncommon impression that a perfect lawyer ought to be able to win any case, good or bad ; and a lawyer's skill is not infrequently measured by his success in defending the wrong. But in all the books and articles that have treated of Lincoln it has never been suggested that he ever lost a just cause where any lawyer ought to have succeeded. Where he could he made a very careful examination before going into trial, or even before agreeing to go into trial. If from such preliminary investigation he saw that the law or facts placed his client at a disadvantage, a settlement was recommended. If this were impossible, Lincoln usually managed to get out of the trial by turning the case over to his partner, Judge Stephen T. Logan, or afterward to William H. Herndon, who could be equally as skillful, intense, eloquent, pathetic, and vehement on the wrong side as the right. If, however, by a misrepresentation of the facts or otherwise Mr. Lincoln got into the trial of a cause wherein he became satisfied his client was in the wrong, he appeared very weak, spiritless, and destitute of resources. But if convinced of the justice and righteousness of his side of the controversy, and with time for mature thought, he went into and through the trial with a buoyant, unflinching courage and matchless power.

Lincoln's tact was remarkable. He carefully studied and thought out the best way of saying everything, as well as the substance of what he should say. Every important thing he said or did was the result of great deliberation, although the casual observer might have gained the impression that many things were entirely *impromptu*. This was especially true in jury trials, in all of which he managed at some time to say or do some very peculiar thing, or some common thing in a very peculiar manner. While the jury might have thought this to have come to him on the spur of the moment, usually it came at the critical point of his case, directing attention to that which he desired should be most prominent, and impressing it on every mind. Other lawyers always expected such a feature, and were afraid of it. They felt sure it would appear in every case, but never could tell beforehand just where it would strike. Sometimes he seemed to take a delight in expressly conceding to his opponent every proposition and fact which his own client or the spectators thought to be in his favor, and then, to the surprise of all, taking some un-

expected but firm and impregnable position which controlled and won the case.

An interesting personal and court reminiscence is thus stated by Judge Bergen : " The first time I saw Lincoln as a lawyer was in the old Morgan County Court-House, at Jacksonville, when he was defending Colonel Dunlap, a wealthy, aristocratic Democrat, in an action for \$10,000 damages, brought against him by the editor of what was then called the abolition paper. The action grew out of a deliberately-planned and severe cowhiding administered by the Colonel to the editor, on a bright Saturday afternoon, in the public square, in the presence of hundreds of the town and country people whom the Colonel desired to witness that novel and exciting performance. Besides local counsel, the editor had employed Ben. Edwards, who was the most noted for eloquence of all the Democratic lawyers in the State. Colonel Dunlap retained Lincoln as one of his lawyers for the defence.

" I ran off from my recitations for the sole purpose of hearing Lincoln. Edwards used all the arts of the orator and advocate. He pictured, until it could almost be felt, the odium and disgrace to the editor, which he declared were worse than death. He wept, and made the jury and spectators weep. The feelings of those in the court-house was roused to the highest pitch of indignation against the perpetrator of such an outrage. It was felt that all the Colonel's fortune could not compensate for the lawless indignity, and that the editor would in all probability recover the full \$10,000. No possible defence or palliation existed.

" Before all eyes were dried, it was Lincoln's turn to speak. He dragged his feet off the table, on the top of which they had been resting, set them on the floor, gradually lifted up and straightened out his great length of legs and body, and took off his coat. While removing his coat it was noticed by all present that his eyes were intently fixed upon something on the table before him. He picked up the object, a paper, scrutinized it closely, and, without uttering a word, indulged in a long, loud laugh, accompanied by his most wonderfully grotesque facial expression. There was never anything like the laugh or the expression. It was magnetic. The whole audience grinned. Then he laid the paper down slowly, took off his cravat, again picked up the paper, re-examined it, and repeated the laugh. It was

contagious. He then deliberately removed his vest, showing his one yarn suspender, took up the paper, again looked at it curiously, and again indulged in his peculiar laugh. Its effect was absolutely irresistible. The usually solemn and dignified Judge Woodson, members of the jury, and the whole audience joined in the merriment, and all this before Lincoln had spoken a single word.

“When the laughter had subsided, he apologized to the Court for his seemingly rude behavior and explained that the amount of damages claimed by the editor was at first written \$1,000. He supposed the plaintiff afterwards had taken a second look at the Colonel's pile, and concluded that the wounds to his honor were worth an additional \$9,000. The result was to at once destroy the effect of Edwards's tears, pathos, towering indignation and high-wrought eloquence, and to render improbable a verdict for more than \$1,000. Lincoln immediately and fully admitted that the plaintiff was entitled to a judgment for some amount, argued in mitigation of damages, told a funny story applicable to the peculiar nature of the case, and specially urged the jury to agree upon some amount. The verdict was for a few hundred dollars, and was entirely satisfactory to Lincoln's client.”

It is the judgment of every man who has written or spoken of Lincoln that the most pervading and dominant element of his character was his love of truth; not merely the moral avoidance of a falsehood, but truth in its most comprehensive sense; correctness and accuracy in fact, in science, in law, in business, in personal intercourse, and in every field. All his biographers attribute this quality to him, and it is in this connection that Judge Bergen contributes a new chapter to the volumes of contemporaneous testimony intended to faithfully chronicle his life and work.

In the index to the American edition of an English law book is found this line: “Lincoln, President, Abraham, how he procured an acquittal by a fraud, 269 n.” The text of the note referred to is as follows:

“In Lamon's life of Abraham Lincoln, p. 327, an account is given of Mr. Lincoln's defence of a man named Armstrong, under indictment for murder. The evidence against the prisoner was very strong. But, says the biographer, ‘the witness whose testimony bore hardest upon Armstrong swore that the crime was committed about eleven o'clock at night, and that he saw the blow struck by the light of a moon nearly full.’ Here Mr. Lincoln

saw his opportunity. 'He handed to an officer of the court an almanac, and told him to give it back to him when he should call for it in the presence of the jury. It was an almanac of the year previous to the murder.' Mr. Lincoln made the closing argument for the defence, and in the words of Mr. Lamon, 'in due time he called for the almanac, and easily proved by it that at the time the main witness declared the moon was shining in great splendor, there was in fact no moon at all, but black darkness over the whole scene. In the roar of laughter and undisguised astonishment succeeding this apparent demonstration, court, jury, and counsel forgot to examine that seemingly conclusive almanac, and let it pass without question concerning its genuineness.'

This story Judge Bergen pronounced to be absolutely untrue, and gives a full account of all the circumstances of the trial in which the almanac incident occurred. Although the case awakened intense local interest, as every murder case does, it became widely celebrated only through the fact that a man so distinguished as Lincoln appeared in it as an advocate. All the larger biographies refer to it : Lamon, Arnold, Herndon, Hay and Nicolay, and recently Miss Tarbell in *McClure's Magazine*. Mr. Edward Eggleston in his novel, "The Grayson's," most effectively makes the use by Mr. Lincoln of an almanac the climax of his story. In the *St. Louis Globe Democrat* of September 15, 1895, a correspondent writing from the town of Virginia, Ill., to which the county-seat of Cass County had then been removed, said : "The old court-house in Beardstown still stands. It was in this edifice that Lincoln used a doctored almanac in defense of Duff Armstrong for murder." This was republished in the *Virginia Gazette*, and widely copied in the country press.

The homicide took place in Mason County, in the purlieus of a camp meeting, where the rowdy elements from country and town for forty miles around had established their headquarters for gambling, horse-racing, whiskey-selling, cock-fighting and other associate vices. The religious camp-meeting people and the rough element, who together then constituted a majority of the inhabitants of that region, determined that every person suspected of connection with the crime should be punished; the former in order that their good name might be preserved, and the latter that the death of a leader of their party should be avenged. One man had been convicted and sent to the penitentiary for complicity in the crime. Armstrong, jointly indicted with him, obtained a change of venue to Cass County.

"The trial," continues Judge Bergen, "occurred at the first

term of court which I attended after my admission to the bar. I had an intense desire to learn how good lawyers examined witnesses, and especially to see and hear all of a trial conducted by counsel so eminent. Particularly was my closest attention directed to Mr. Lincoln and to every word and movement of his from the time he entered the court room until he took his departure. During the entire trial I was seated in the bar behind the attorneys for the State and those for the defendant, not more than four feet from any one of them, and noticed everything with the deepest interest, as any young lawyer naturally would.

“During the introduction of the evidence Mr. Lincoln remarked to the judge that he supposed the court would take judicial notice of the almanac; but in order that there might be no question on that point he offered it as a part of the evidence for the defence, the court accepting it and remarking that any one might use the almanac in the progress of the argument. Lincoln, with his usual care, had brought with him from Springfield the almanac then regarded as the standard in that region. At a recess of the court he took it from his capacious hat and gave it to the sheriff, Dick, with the request that it should be returned to him when he called for it. In the succeeding campaign the Democrats induced Sheriff Dick to make an affidavit that he did not notice the year covered by the almanac, and this is taken by some as conclusive evidence that Lincoln intended to deceive. The only object was to break the monotony of his argument, and to fix the attention and memory of the jury on the fact proved.

“When Lincoln finally called for the almanac he exhibited it to the opposing lawyers, read from it, and then caused it to be handed to members of the jury for their inspection. I heard two of the attorneys for the State, in whispered consultation, raise the question as to the correctness of the almanac, and they ended the conference by sending to the office of the clerk of the court for another. The messenger soon returned with the statement that there was no almanac of 1857 in the office. (It will be remembered that the trial occurred in 1858 for a transaction in 1857.) In the Presidential campaign soon following it was even charged that Lincoln must have gone around and purloined all the almanacs in the court-house. However, I well remember that another almanac was procured from the office of Probate Judge Arenz, in the same building. It was brought

to the prosecuting attorneys, who examined it, compared it with the one introduced by Mr. Lincoln, and found that they substantially agreed, although it was at first intimated by the State's attorneys that they had found some slight difference.

All this I personally saw and heard, and it is as distinct in my memory as if it had occurred but yesterday. No intimation was made, so far as I knew, that there was any fraud in the use of the almanac, until two years afterward, when Lincoln was the nominee of the Republican party for the Presidency. In that year, 1860, while in the mountains of Southern Oregon, I saw in a Democratic newspaper, published at St. Louis, an article personally abusive of Mr. Lincoln, stating that he was no statesman, and only a third-rate lawyer; and to prove the deceptive and dishonest nature of the candidate the same paper printed an indefinite affidavit of one of the jurors who had helped to acquit Armstrong. to the effect that Mr. Lincoln had made fraudulent use of the almanac on the trial. For some inexplicable reason he failed to call this pretended knowledge to the attention of the other jurors at the time of the trial, but very promptly joined in the verdict of acquittal, and waited two years before giving publicity to what would at the proper time have been a very important piece of information.

“ Soon after this I saw an affidavit made by Milton Logan, the foreman of the jury, that he personally examined the almanac when it was delivered to the jury, and particularly noticed that it was for the year 1857, the year of the homicide. I had a better opportunity than any of the jurors to see and hear all that was publicly and privately done and said by the attorneys on both sides, and know that the almanacs of 1857 now preserved in historical and other public libraries sustain and prove to the minute all that was claimed by Mr. Lincoln on that trial as to the rising and setting of the moon, although my best recollection is that the hour of the crime was claimed to be about midnight instead of eleven o'clock, as stated in many of the books. I do not know that this calumny was ever called to Mr. Lincoln's attention, or if it was that he ever took the trouble to contradict it. He might well have pursued his regular habit of ignoring such things. If his public and private conduct and his reputation as a citizen and lawyer were not sufficient to refute the charge, his personal denial would have been of little more avail.

“ ‘ Ram on Facts ’ and other books which publish what they pretend to be the truth as to this incident do not give the newspaper accounts as their authority, but all are based on a communication by J. Henry Shaw, a lawyer of Beardstown, a political opponent of Lincoln’s, who was one of the prosecuting attorneys in the Armstrong case. His letter is printed in Lamon and in Arnold ; and all other writers who have referred to the case cite that as their authority. Mr. Shaw says there were two almanacs at the trial, and that he believes ‘ Mr. Lincoln was entirely innocent of any deception in the matter. ’ He further states that the prevailing belief in Cass County was that the almanac was prepared for the occasion ; and that Mr. Carter, a lawyer of Beardstown who was present at but not engaged in the Armstrong case, says he is satisfied that the almanac was of the year previous and thinks he examined it at the time.

“ This man Carter, who was Buchanan’s village postmaster, had one case for jury trial at that term. Mr. Lincoln, for a \$5 fee, had run Carter’s worthless, litigious client out of court on a motion for security for costs. Of course, it was easy to satisfy Carter that Mr. Lincoln would do or had done almost anything diabolical, as it also was the maddened, unthinking camp-meeting people and the wicked, rough element, who alike had already condemned the accused, and who craved the rare spectacle of a hanging.

“ Other features of the Armstrong case were more interesting and more difficult of determination than this episode of the almanac. They called out the mental powers not only of Mr. Lincoln, but of his shrewd antagonists. In their solution Lincoln showed that he had mastered some technical questions in anatomy. The main witness testified that he saw Armstrong strike the deceased on the forehead with a slung-shot. The physicians testified that the blow on the forehead was inflicted by a man’s fist. They further testified that death was caused by a blow with a club on the back of the head, which other evidence showed had been given by the man then in the penitentiary ; and this evidence failed to prove that Armstrong was acting in concert with him. Lincoln’s principal medical witness was Dr. Benjamin F. Stephenson, of Petersburg, Illinois, who afterward attained celebrity and honor as the founder and first organizer of the Grand Army of the Republic.”

JAMES L. KING.

